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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

JUDY MADSEN, ED MARTIN, and SHIRLEY HOBBS,
Petitioners,
v.
WOMEN'S HEALTH CENTER, INC., AWARE WOMAN CENTER FOR CHOICE, INC., EPOC CLINIC, INC., and CENTRAL FLORIDA WOMEN'S HEALTH ORGANIZATION, INC.,
Respondents.

On Writ of Certiorari to the Supreme Court of Florida

BRIEF FOR NATIONAL ABORTION FEDERATION AND PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

National Abortion Federation ("NAF") and Planned Parenthood Federation of America, Inc. ("PPFA") submit this brief in support of Respondents.[1] NAF, a not-for-profit professional association, was founded in 1977 and is composed primarily of clinics and physicians' offices providing reproductive health services, including abortion. Currently, NAF members include approxi-

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[1] The parties have consented to the filing of this brief. Their letters of consent are being filed with the Clerk of the Court.

mately 300 abortion providers[2] operating in 44 states, the District of Columbia, Puerto Rico and Canada. NAF's primary objective is to unite providers of abortion services into a professional community dedicated to quality care. NAF provides professional standards, guidelines, training and education to its members and serves as a clearinghouse for information and advice to abortion service professionals and the general public.

PPFA, a not-for-profit corporation organized in 1922, is the leading national voluntary health organization in the field of family planning. Currently, PPFA has 164 affiliates in 49 states operating approximately 919 family-planning clinics. Forty-three PPFA affiliates, as well as the national office, are also members of NAF. PPFA affiliates offer a wide range of services relating to reproductive health, including abortion. Sixty-nine PPFA affiliates, operating 117 clinics, offer abortion services as part of their program. All PPFA affiliates that do not provide abortion services themselves offer counseling and referral for such services.

NAF members and PPFA affiliates are the targets of antiabortion violence and intimidation in all parts of the nation. Accordingly, *amici* have obtained numerous injunctions limiting the unlawful activities of antiabortion protesters, including injunctions containing buffer zones like that entered below. *Amici* have a special concern that the Court be fully informed about the beneficial results of buffer zone injunctions, which effectively and constitutionally balance the interests of protesters, providers, patients and staff, as well as the communities in which they are located.

STATEMENT OF FACTS

Amici curiae refer to the Statement of Facts set forth in the Brief for Respondents filed with this Court.

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[2] Six applications for membership in NAF are currently pending.

SUMMARY OF ARGUMENT

The conduct that prompted the trial court to enter the Amended Permanent Injunction ("Injunction") is the same type of conduct that has confronted abortion providers throughout the country and the communities in which they are located. The Circuit Court of Florida, like other state and federal courts, was called upon to balance the First Amendment rights of those who oppose abortion with the rights of women seeking abortion to have safe access to medical services, the rights of abortion clinics to provide those services, and the needs of the communities to maintain public order. Many courts have undertaken this delicate task through the use of injunctions similar to the Injunction entered below, tailored to the particular facts of the cases before them.

Amici seek to demonstrate to this Court that these injunctions are reasonable time, place and manner restrictions that sensitively balance the competing interests of all concerned; that they are comparable to injunctive solutions successfully employed by courts in similar highly-charged situations outside the abortion context; and that the injunctions' coverage, which extends to all persons who act in concert with named parties, is a well-established and necessary means to ensure obedience to court orders.

ARGUMENT

I. COURTS ACROSS THE NATION HAVE SUCCESSFULLY USED BUFFER ZONE INJUNCTIONS TO CONTROL LAWLESS AND DISRUPTIVE CONDUCT AROUND ABORTION CLINICS

The facts that prompted the Respondents here to seek relief from the Florida courts mirror the facts that have propelled clinic operators and abortion-seeking women into the courts in other communities across America. Protests of quiet singing, praying or picketing intended to dissuade abortion-seeking women from exercising their constitutional right of choice have been intentionally mixed with lawless conduct and disruptive activities that frequently evolve into major assaults on the public health, welfare, safety and order. *See Northeast Women's Center, Inc. v. McMonagle*, 939 F.2d 57, 62-64 (3d Cir. 1991); *New York State National Organization for Women v. Terry*, 886 F.2d 1339, 1362-64 (2d Cir. 1989), *cert. denied*, 495 U.S. 947 (1990); *Portland Feminist Women's Health Center v. Advocates for Life, Inc.*, 859 F.2d 681, 686-87 (9th Cir. 1988); *Pro-Choice Network v. Project Rescue Western New York*, 799 F. Supp. 1417, 1423-24 (W.D.N.Y. 1992), *motion to vacate denied*, 828 F. Supp. 1018 (W.D.N.Y. 1993); *Women's Health Care Services, P.A. v. Operation Rescue-National*, 773 F. Supp. 258, 261 (D. Kan. 1991); *Planned Parenthood Ass'n of San Mateo County v. Holy Angels Catholic Church*, 765 F. Supp. 617, 625-26 (N.D. Cal. 1991); *Cousins v. Terry*, 721 F. Supp. 426, 431-32 (N.D.N.Y. 1989); *Town of West Hartford v. Operation Rescue*, 726 F. Supp. 371, 373-75 (D. Conn. 1989), *vacated and remanded*, 991 F.2d 1039 (2d Cir.), *cert. denied*, 114 S. Ct. 185 (1993); *National Organization for Women v. Operation Rescue*, 726 F. Supp. 1483, 1488-90 (E.D. Va. 1989), *aff'd*, 914 F.2d 582 (4th Cir. 1990), *rev'd in part on other grounds sub nom. Bray v. Alexandria Women's Health Clinic*, 113 S. Ct. 753 (1993); *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991) (per curiam); *Planned*

Parenthood League of Massachusetts, Inc. v. Operation Rescue, 550 N.E.2d 1361, 1370-71 (Mass. 1990); *Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 556 N.E.2d 157, 160 (Ohio 1990); *Federal Way Family Physicians, Inc. v. Tacoma Stands Up For Life*, 721 P.2d 946, 947 (Wash. 1986).

When called upon to intervene in these situations, courts have properly relied upon their injunctive powers to stop the illegal and disruptive conduct and to establish clear lines of demarcation between women seeking medical services and those providing the services, and those who oppose abortion. As the following examples demonstrate, these injunctions have succeeded in balancing the competing rights of all involved: women have obtained medical services, the public order has been maintained, and legal protests have continued.

A. San Mateo, California

Planned Parenthood of San Mateo County operates seven reproductive health clinics, three of which provide abortions in San Mateo, Redwood City and Daly City. All three clinics are now protected by injunctions.

The San Mateo clinic provides a wide variety of reproductive health care services including first trimester abortions. Although a handful of persons had picketed the clinic for years, by 1992 their numbers had grown substantially and there was an increase in the level of hostility and aggression of the demonstrators. The protesters would shadow patients as soon as they arrived in their cars. They would thrust antiabortion literature into open car windows and wait for the patient to exit the car. They would then follow the patient en masse to the clinic entrance, all the while screaming that the woman should not allow her baby to be killed.[3] In the spring of 1992,

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[3] *See also Bering v. SHARE*, 721 P.2d 918, 923 (Wash. 1986), *cert. dismissed*, 479 U.S. 1050 (1987) (court found "counseling" had been forced where clinic demonstrators threatened and screamed at patients refusing to take their literature and accused patients of killing babies).

the clinic was granted injunctive relief in federal court; that injunction was replaced by a preliminary injunction in state court in the fall of 1993. *Planned Parenthood Ass'n of San Mateo County v. Operation Rescue*, No. 384995 (Super. Ct., San Mateo County, Cal. Nov. 9, 1993), App. 1a.[4] The injunction reaches "any persons in active concert or participation" with the named defendants. App. 2a. It requires such persons to remain at least 15 feet from the clinic property line, which effectively places them across the street from the facility and creates a buffer zone between the enjoined protesters and patients. The protesters must also refrain from making any noise that is audible in the clinic once the doors are closed. App. 3a.

Prior to the creation of a buffer zone, the patients were considerably stressed by the confrontational and threatening activities of the screaming protesters, thus increasing the risks of medical complications.[5] Escorting companions, understandably concerned about the health and wellness of the patient, would often respond with equal hostility to the tauting antiabortion activists, thus increasing the risks for violence.[6] Clinic personnel would also experience stress, distraction and disruption as they attempted to deliver surgical services to their patients.

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[4] Copies of the unreported decisions cited by *amici* are reproduced in the Appendix to this brief.

[5] *See also Holy Angels Catholic Church*, 765 F. Supp. at 620 ("protestors' conduct causes plaintiff's patients and staff extreme emotional distress. . . . [P]atients are often so upset by the picketers' conduct that they are forced to reschedule their appointments, requiring more advanced, and therefore more dangerous, medical procedures.").

[6] *See also Southwestern Medical Clinics of Nevada, Inc. v. Operation Rescue*, 744 F. Supp. 230, 232 (D. Nev. 1989) (protesters "verbally and physically harassed [clinic's] patients and employees as well as those who act as escorts"; hostility escalated to a point where physical confrontation is likely); *Town of West Hartford*, 726 F. Supp. at 374 (protests caused one clinic employee to suffer an anxiety attack and four employees to quit due to fear generated by the protests).

The buffer zone now prevents intimidation of patients, companions and clinic staff. Although arriving patients can still see and hear the protesters, they are no longer fearful of being harassed and the potential for violence has greatly decreased. Moreover, clinic staff are able to attend to normal clinic operations. At the same time, law enforcement officials are especially pleased by the new calm now surrounding the facility. Demonstrators understand their boundaries and remain within them. In fact, while the protests continue, no arrests have been necessary since the injunction went into effect.

B. Duluth, Minnesota

The Women's Health Center of Duluth is the only provider of first trimester abortions in the state of Minnesota outside of the Twin Cities area of St. Paul-Minneapolis. As such, it services women from 24 counties within the state as well as several in Wisconsin, Michigan and Canada. In addition to abortion services, the clinic offers family planning, gynecological care, testing for sexually transmitted diseases, contraceptive services and breast and cancer screenings.

Ever since the clinic opened, a persistent and small group of protesters has regularly paced the sidewalk outside the clinic with posters decrying abortion. These protests were peaceful, orderly and nonthreatening to arriving patients. In 1992, however, a group of demonstrators from outside the Duluth community began targeting the clinic. These protesters were much more aggressive and hostile in their behaviors.

The new band of demonstrators was not content to march with picket signs and pass out antiabortion literature. Instead, the protesters rushed at the patients as soon as they would alight from their cars. In touching and grabbing confrontations, they would thrust plastic fetuses at the women and scream at them to not let the "butcher suck your baby out limb by limb."[7] For some

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[7] *See also Pro-Choice Network*, 799 F. Supp. at 1424-25 (the demonstrators, who often became "angry and frustrated" would

women who had driven as many as eight hours to reach the clinic, the sight of shouting protesters with graphic, massive signs reaching for them as they tried to get out of their cars was overwhelming.[8]

The clinic sought and obtained an injunction against these protesters and those acting in concert with them. *Women's Health Center v. Operation Rescue*, No. C0-93-601157 (Dist. Ct., St. Louis County, Minn. June 16, 1993), *appeal pending*, No. C9-93-1776 (Minn. Ct. App.), App. 4a. Under its terms, the defendants and "persons acting in concert or participation with Defendants who receive notice of [the] Injunction" may not engage in protest activities within 100 feet of the clinic property lines. App. 4a-5a. Although the buffer confines the enjoined defendants to protesting across the street from the clinic, they remain in full eyesight and earshot of the clinic's invitees. Now, however, the women are able to enter the clinic without increased levels of stress and intimidation. Further, all the protesters, patients, clinic personnel and the police now know who and what type of activity is prohibited outside the clinic. There have been no violations of the injunction.

C. Fargo, North Dakota

From the day that Fargo's only full service reproductive health care clinic opened in October 1981, anti-

"crowd around people trying to enter the facilities in an intimidating and obstructing manner, and grab, push and shove the patients, patient escorts and staff"); *Holy Angels Catholic Church*, 765 F. Supp. at 619 ("defendants have unlawfully attempted to intimidate women into abandoning planned abortion, . . . shoving plastic replicas of fetuses into the faces and cars of clinic staff and patients, as well as other action which transcends the rights of peaceful protest, assembly and free speech").

[8] *Cf. Northeast Women's Center, Inc. v. McMonagle*, 745 F. Supp. 1082, 1090 (E.D. Pa.) (Assistant DA who witnessed a demonstration testified that " 'demonstrators' activity rose to a "frenzy" and that he delayed leaving the [clinic] out of fear for his physical safety' " (citation omitted)), *modified*, 749 F. Supp. 695 (E.D. Pa. 1990), *aff'd as modified and remanded in part*, 939 F.2d 57 (3d Cir. 1991).

abortion protests began. However, by March 1991, after several clinic invasions, the clinic found it necessary to secure a court-ordered injunction which limited protests to 100 feet from the clinic's property lines. *Fargo Women's Health Organization, Inc. v. Lambs of Christ*, Civil No. 91-1953 (Dist. Ct., Cass County, N.D. Sept. 17, 1992), App. 7a, 9a.

The protest scene at the clinic, prior to obtaining the buffer zone, was chaotic. Demonstrators would physically attack approaching vehicles or throw their bodies under the wheels. Some arriving patients would worry about hitting the protesters and would just continue driving past the clinic. Those patients brave enough to attempt clinic entry were surrounded by the protesters and taunted with antiabortion messages until they were able to access the building.[9] The building itself, a converted wood frame house, could not block out the excessive noise made by the demonstrators. Thus, while women waited for their procedures and underwent anesthesia, and while doctors performed surgery, constant shouts of "stop murdering your baby" would pierce the walls of the clinic.[10]

[9] *See also Cousins v. Terry*, 721 F. Supp. at 432 (many women who succeeded in getting past demonstrators into the clinic "were traumatized by the ordeal of having to be escorted past and over demonstrators who frequently shouted insulting epithets").

[10] *See also Pro-Choice Network*, 799 F. Supp. at 1425 (the voices of the protesters were so loud, and sometimes accompanied by use of bullhorns, that the noise reached patients already inside the clinic and "disturb[ed] the quiet environment necessary for providing safe and efficacious health care"); *Holy Angels Catholic Church*, 765 F. Supp. at 621; *Northeast Women's Center*, 745 F. Supp. at 1090 (" 'the sound of chanting, amplified by bullhorns, was audible in the [clinic's] operating room . . . [and] put patients "under considerably greater stress," especially when going or coming out of general anesthesia' " (citation omitted)); *Planned Parenthood of Monmouth County, Inc. v. Cannizzaro*, 499 A.2d 535, 537 (N.J. Super. Ct. Ch. Div. 1985), *aff'd*, 526 A.2d 741 (N.J. Super. Ct. App. Div. 1987); *Planned Parenthood Ass'n of Cincinnati*, 556 N.E.2d at 160.

Fargo police officials have welcomed the injunction. Before there were clear lines of demarcation between the protesters, patients, escorts and staff, the police found it difficult to determine who was in legitimate need of clinic access and who was involved in intimidation and harassment. An officer testified at trial that " 'law enforcement has a need for [this 100-foot] distance to effectively react to the crowds' and 'to effectively control the area and maintain peace and order and . . . access to the premises.' " *Fargo Women's Health Organization, Inc. v. Lambs of Christ*, 502 N.W.2d 536, 537 (N.D. 1993) (citation omitted).

Before the buffer zone, the City of Fargo had a detail of police officers with daily assignments to keep order at the clinic. Since the creation of the buffer zone, there is no longer a need for continual surveillance, despite continuing protests, and the police are rarely called to the clinic.

D. Jersey City, New Jersey

The Horizon Health Center is located in a commercial section of an inner city neighborhood in Northern New Jersey. A full service facility, it provides family planning, prenatal care, well-baby care and educational counseling. On Saturdays, it performs first trimester abortions as well as glucose testing for pregnant women. For many years, a small group would engage in visible, audible and peaceful protest from a site across the street from the facility.

By the fall of 1991, however, the number of protesters had increased and they moved their activities to the clinic's side of the street where the sidewalk is only 12 feet in width and the clinic doors open directly onto it. As the picketers would march in a huge elliptical circle, the patients would have no clear access from the street to the clinic's front door.[11] Some women were undaunted

[11] *See also Pro-Choice Network*, 799 F. Supp. at 1424 (court found that method and manner of picketers forced patients to

by the demonstrations and would break the picket line to gain clinic entry. Many other women, particularly those who were young, immigrant or otherwise vulnerable, would return home and call the clinic stating their fear of encountering the protesters. Members of the clinic staff would then go to their homes and personally escort the women back to the clinic.[12]

Clinic personnel increasingly found it necessary to summon the police to the scene in order to open sidewalk access for the patients. As soon as the police would leave, however, the picketers would resume blocking the clinic entrance. On one occasion, a crowd of approximately 150 demonstrators stationed themselves on the narrow sidewalk immediately outside the clinic and began singing, chanting, shouting into the clinic with a megaphone, and "sidewalk counseling" with advice that the women should not enter the clinic because "they will tear the arms and legs off your baby." [13]

The police erected a barricade on the narrow sidewalk and directed the protesters to stand behind it. While this solution created a small corridor of passage for persons seeking to enter the facility, the narrow sidewalk could not hold the large number of protesters massed behind the barricade.[14] Thus, the demonstrators spilled out onto

"run a gauntlet of harassment and intimidation" and constituted a "constructive blockade").

[12] *Cf. Holy Angels Catholic Church*, 765 F. Supp. at 620-21 ("Plaintiff has been forced to obtain the services of volunteer escorts to shuttle patients between their cars and the clinic because of the aggressive and invasive protesting.").

[13] *See also Women's Health Care Services*, 773 F. Supp. at 261 (by "sidewalk counseling" protesters "seek[] to abuse, harass, or intimidate women patients . . . so that they do not enter the . . . clinics").

[14] *Cf. NOW v. Operation Rescue*, 726 F. Supp. 300, 303 (D.D.C. 1989) (police testified that "protestors would breach police barricades despite the use of such non-violent methods as saw horses, tape, metal barricades, and human chains of police officers").

the street and caused traffic to detour.[15]

The clinic sued for injunctive relief in order to prevent future protests of this nature. The trial court, after a full hearing, granted the clinic's request and, among other things, ordered a buffer zone which placed the demonstrators where they had been originally, across the street from the clinic. *Horizon Health Center v. Felicissimo*, 622 A.2d 891 (N.J. Super. Ct. App. Div.), *cert. granted*, 634 A.2d 527 (N.J. 1993). The injunction covers an individual, the defendant organization, Helpers of God's Precious Infants, as well as "persons . . . acting in concert or combination" with the defendants. *Id.* at 896. Since the court's order, protests continue at Horizon. However, the demonstrators have complied with its terms, and women have gained safe access to medical services without incident.

E. Chamblee, Georgia

The Northside Women's Clinic is a licensed ambulatory outpatient surgical facility which also provides abortion services. The clinic is located on a curved four-lane road in Chamblee, Georgia, a small incorporated suburb of Metropolitan Atlanta. While the population of Chamblee is less than 5,000 people, this small town, as well as the owner, patients, staff and neighbors of the Northside Women's Clinic, has become all too familiar with the phenomenon of the unruly antiabortion protest.

For several years, antiabortion demonstrations with as few as 10 and as many as 500 protesters had been the norm at the clinic. The protesters would stand in either

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[15] *See also Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, Nos. C-860550, C-860659, C-870015, C-860580, C-860577, C-860878, C-860825, C-870086, C-870150, C-870757, 1989 WL 9312, at *3 (Ohio Ct. App. Feb. 8, 1989) (court found sidewalk continuously blocked by groups of picketers standing about or moving in a continuous line so no one could pass by, forcing people to walk in the street), *aff'd*, 556 N.E.2d 157 (Ohio 1990).

of two clinic driveways and block access to the facility. There, they would picket with huge signs and use bullhorns to shout epithets at arriving patients. Invariably, these protesters would also stand in the curved public roadway outside the clinic. Motorists unable to see around the curve would be startled at the sudden sight of demonstrators in the street. Moreover, the large signs held by the demonstrators also blocked the vision of drivers attempting to exit the clinic's driveways. Indeed, the street outside the Northside Women's Clinic was the site of several minor vehicular accidents during times of abortion protests.[16]

Sometimes protesters would jump on the hoods of the cars, bang on the car windows and scream at the patients not to visit the "baby killer." On several occasions, the protesters would mount the hood of the owner-physician's pick up truck, form their hands in the shape of a pistol and declare "you're next."

The protesters would engage in these activities despite the patient's reason for business. Thus, even elderly Medicare patients visiting the clinic for gynecological services would be verbally harassed by the demonstrators.[17] The clinic's neighbor, an automotive refinishing business, was also affected by the protests. Zealous demonstrators would trespass on the neighbor's property and climb trees there in order to shout over a common wall at the women

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[16] *See also Women's Health Care Services*, 773 F. Supp. at 269 ("protests . . . do not involve mere trespass upon the private property of the [clinic], but upon the property of neighbors, as well as the blocking of public streets and thoroughfares and the hinderance of legal traffic upon those streets").

[17] *Cf. Bering v. SHARE*, 721 P.2d at 923 (patient who was miscarrying a wanted pregnancy and bleeding heavily had to force her way through a group of picketers to reach her nurse and wheelchair; court found that picketers obstructed passage of visitors and staff at medical building).

entering the clinic.[18] The Chamblee Police Department was ill-equipped to handle these demonstrations. With less than six officers assigned per shift to cover the entire town, they were dramatically outnumbered during any large protest at the clinic.

In December 1992, the clinic obtained a permanent injunction with various restrictions including prohibiting protesters from coming within 10 feet on either side of the clinic's two driveways, and from placing signs within the area of the buffer. *James Gay, M.D. v. Nancy Kuehl, et al.*, No. 91-10869-9 (Super. Ct., DeKalb County, Ga. Dec. 11, 1992), App. 12a, 14a. According to the issuing court, the protest situation at the clinic "presents a classic case of the rights of the Plaintiffs to operate a lawful, licensed business and medical facility and the rights of clinic patients to obtain desired medical services colliding with the Defendants' Constitutional rights of freedom of speech and freedom of assembly. *A balance is necessary to preserve the rights of all.*" App. 13a (emphasis added).

Since the injunction was entered, a sense of calm and order has been restored to the neighborhood outside the clinic. Except for the driveway areas protected by the buffer zones, protests continue on the right-of-way abutting the clinic and arriving patients do not escape the antiabortion message. At the same time, the patients are now free to enter and exit the medical facility as they would any other legitimate business in Chamblee. Before buffer zone relief, the town's local police department was consistently overwhelmed by the demonstrations. With buffer zone protection in place, they are rarely called to

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[18] *See also Women's Health Care Services*, 773 F. Supp. at 269 (protests spilled over to the private property of the neighbors); *cf. Southwestern Medical Clinics of Nevada*, 744 F. Supp. at 232 (protesters "have congregated in such numbers on the sidewalks and in the parking lots . . . so as to prevent customers of tenants unrelated to Plaintiffs' clinics from entering and leaving said facilities").

the clinic and, when that occurs, there are clear boundary lines established which help them easily to enforce the terms of the injunction.

II. BUFFER ZONE INJUNCTIONS ARE A WELL-ESTABLISHED REMEDY FOR RESTORING PEACE AND ORDER IN DISPUTES OUTSIDE THE ABORTION CONTEXT

Buffer zone injunctions, as well as similar statutorily-imposed restrictions, have been utilized in a variety of contexts outside the abortion sphere. For example, buffer zones have been widely used to establish order in labor disputes. *See M Restaurants, Inc. v. San Francisco Local Joint Executive Board of Culinary Workers, etc.*, 177 Cal. Rtpr. 690, 694 (Cal. Ct. App. 1981) (upholding 10-foot buffer zone and limits on number and spacing of pickets around restaurant and cocktail lounge to control mass picketing, blocking of entrance, loud pejorative statements about the establishment and anonymous threats to employees); *International Molders and Allied Workers Union v. Superior Court*, 138 Cal. Rptr. 794, 800-01 (Cal. Ct. App. 1977) (upholding contempt charges for violating temporary restraining order allowing two pickets within 20 feet of entrance to or exit from iron works after threats of violence and interference with access and freedom of movement); *California Retail Liquor Dealers Ass'n v. United Farm Workers of America*, 129 Cal. Rptr. 407, 408 (Cal. Ct. App. 1976) (upholding buffer zone barring picketing and limiting number of picketers within six feet of retail liquor stores to control blockage of store entrance and physical abuse and intimidation of patrons); *Reeves v. Moreland*, 577 S.W.2d 125, 126-27 (Mo. Ct. App. 1979) (upholding criminal contempt convictions of strikers who violated injunction barring picketing within 100 yards of refrigerator manufacturer to control mass picketing that blocked ingress and egress to property); *Makro, Inc. v. United Food & Commercial Workers Union*, 581 N.E.2d 1143, 1144 (Ohio Ct. App.

1989) (upholding 25-foot buffer zone and limitation on number of picketers around retail warehouse to control mass picketing, litter and noise disturbance); *Nashville Corp. v. United Steelworkers of America*, 215 S.W.2d 818, 819-20 (Tenn. 1948) (upholding contempt convictions of picketers who violated injunction forbidding union members to congregate within 100 yards of employers' plant to control mass picketing, violence and threats of violence).[19]

So, too, have non-injunctive buffer zones long been found constitutional by this Court and others. *See Burson v. Freeman*, 112 S. Ct. 1846 (1992) (plurality opinion) (polling places); *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981) (public fairgrounds); *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773 (1979) (health care facilities); *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (public school); *Concerned Jewish Youth v. McGuire*, 621 F.2d 471 (2d Cir. 1980), *cert. denied*, 450 U.S. 913 (1981) (foreign mission).

As recently as 1992, this Court upheld a 100-foot "campaign-free zone" surrounding polling sites on election day. *Burson v. Freeman*, 112 S. Ct. at 1851, 1858. *Burson* addressed the question of governmental " 'power to regulate conduct in and around the polls in order to maintain peace, order and decorum there.' " *Id.* at 1848 (citation omitted). This Court upheld the constitutionality of the Tennessee law, notwithstanding the fact that it was a facially content-based restriction on political speech in a public forum. *Id.* at 1851.[20]

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[19] Indeed, in the labor context, this Court has upheld the constitutionality of injunctions banning picketing altogether when the picketing becomes enmeshed with "violent conduct which is concededly outlawed." *Milk Wagon Drivers Union v. Meadowmoor Dairies Inc.*, 312 U.S. 287, 292 (1941).

[20] *Amici* do not in any way concede that the Injunction in issue is a content-based restriction.

After an extensive analysis of the long history of election fraud and intimidation at polling places and the beneficial effects of state buffer zones, *id.* at 1852-55,[21] this Court accepted Tennessee's compelling interests for the statute—(1) protecting an individual's right to vote for the candidate of his or her choice and (2) ensuring the election is held with "integrity and reliability." *Id.* at 1851. In contrast, this Court rejected respondent's argument that the buffer zone was overinclusive because Tennessee could serve the same compelling interests with statutes criminalizing intimidation and interference with elections. *Id.* at 1855. As Justice Blackmun stated, such laws " 'deal with only the most blatant and specific attempts' to impede elections," and fail to permit detection of many "undetected or less than blatant acts [that] may nonetheless drive the voter away." *Id.*

The parallels between this case and *Burson* are compelling. Both cases concern interference with a fundamental right under the guise of "free speech." Both cases involve issues of harassment, intimidation and violence. Both cases rely upon a buffer zone to ensure that individuals are free to exercise the fundamental right in question, even though already-existing laws may prohibit the most blatant examples of the unlawful conduct.

Other decisions of this Court outside the abortion context also support the legitimacy of a buffer zone to protect the clinic and its patients from the harassment they suffer from the demonstrators. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981); *Grayned v. City of Rockford*, 408 U.S. 104 (1972). In *Heffron* and *Grayned*, this Court considered the character of the public forum where the "speech" occurred—the former a crowded public fairground and the latter a

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[21] The effectiveness of the buffer zones at the polls corresponds to the peaceful and orderly conditions resulting from such zones at clinics around the country. *See supra* pp. 6-7, 8, 10, 12, 14-15.

public school—and upheld the buffer zones based largely on the nature of the location.

Indeed, this Court has explicitly recognized the special nature of a health care facility in challenges to restrictions on "speech." For example, in *Carey v. Brown*, 447 U.S. 455 (1980), the Court stated that the Constitution does not forbid government protection of the public from the " 'boisterous and threatening conduct that disturbs the tranquility of . . . public and other buildings that require peace and quiet to carry out their functions, such as courts, libraries, schools, and *hospitals*.' " *Id.* at 470-71 (emphasis added) (citation omitted).

This Court also relied on the effect on patients and their care when examining a hospital ban on labor solicitation by employees in various places in the facility. The Court held that such a prohibition was acceptable in areas associated with patient care. *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773 (1979). As Justice Blackmun observed,

> "Hospitals, after all, are not factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family . . . need a restful, uncluttered, relaxing, and helpful atmosphere, rather than one remindful of the tensions of the marketplace in addition to the tensions of the sick bed."

Id. at 783 n.12 (citation omitted). These same considerations apply to the Aware Woman Center for Choice, Inc. ("Aware Woman Center"). The buffer zone created by the Florida court seeks to promote the tranquillity crucial to the patient care rendered at the clinic, particularly in light of the trial court's finding that showed an increase in medical complications due to disturbances and noise around the clinic. J.A. 54.

The buffer zone concept has a long history outside the abortion context. This technique is not a recent innovation in First Amendment law. It is an accepted method of maintaining peace and order in volatile environments, and one that has been recognized as constitutional by this Court and many others. Thus, well-established precedent supports the creation of buffer zones outside the abortion setting to control lawless conduct similar to, or even far less egregious than, that occurring outside Aware Woman Center.

III. NONPARTIES ACTING IN CONCERT WITH NAMED DEFENDANTS HAVE TRADITIONALLY BEEN BOUND BY THE TERMS OF AN INJUNCTION

Recognizing that an injunction's terms can easily be evaded if defendants are permitted to encourage nonparties to do what the injunction forbids, both state and federal courts routinely utilize "acting in concert" provisions to bind nonparties with notice of the injunction. This long-accepted practice not only is constitutional, but also is necessary to ensure the integrity of court orders.

A. The Florida Rules Of Civil Procedure, The Federal Rules Of Civil Procedure, And The Common Law All Permit Courts To Bind Nonparties Acting In Concert With Named Defendants

Petitioners Madsen, Martin and Hobbs, each of whom is a named party to the Injunction, dispute the constitutionality of the trial court's order enjoining

> Operation Rescue, Operation Rescue America, Operation Goliath, their officers, agents, members, employees and servants, and Ed Martin, Bruce Cadle, Pat Mahoney, Randall Terry, Judy Madsen, and Shirley Hobbs, and *all persons acting in concert or participation with them*, or on their behalf, with notice in any manner or by means of this order.

J.A. 56-57 (emphasis added). The "in concert with" language derives from Fla. R. Civ. P. 1.610(c), which, like its federal counterpart,[22] provides:

> Every injunction . . . shall be binding on the parties to the action, their officers, agents, servants, employees, and attorneys and on those persons in active concert or participation with them who receive actual notice of the injunction.

At the time of its adoption in 1938, Fed. R. Civ. P. 65(d) reflected prevailing common-law doctrine, which held

> that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in "privity" with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.

Regal Knitwear Co. v. NLRB, 324 U.S. 9, 14 (1945). Thus, federal court and state court injunctions routinely bind nonparties who have received actual notice and are acting in concert with the named parties.[23]

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[22] Fla. R. Civ. P. 1.610 has been "extensively amended so that it is similar to Federal Rule of Civil Procedure 65." Committee Notes on 1980 Amendment to Rule 1.610.

[23] *See, e.g., Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 177-81 (1973); *New York State National Organization for Women v. Terry*, 961 F.2d 390, 397-98 (2d Cir. 1992), *vacated on other grounds sub nom. Pearson v. Planned Parenthood Margaret Sanger Clinic*, 113 S. Ct. 1233, *judgment reinstated*, 996 F.2d 1351 (2d Cir. 1993) (per curiam); *Aradia Women's Health Center v. Operation Rescue*, 929 F.2d 530, 533 (9th Cir. 1991); *Coca-Cola Co. v. Overland, Inc.*, 692 F.2d 1250, 1255-56 (9th Cir. 1982); *Lance v. Plummer*, 353 F.2d 585, 591 (5th Cir. 1965), *cert. denied*, 384 U.S. 929 (1966); *Marshall v. Blasters, Drillrunners, and Miners Union*, 30 Fed. R. Serv. 2d 866 (S.D.N.Y. 1980); *South Central Bell Telephone Co. v. Constant, Inc.*, 304 F. Supp. 732, 735-36 (E.D. La. 1969), *aff'd*, 437 F.2d 1207 (5th Cir. 1971); *Royal News Co. v. Schultz*, 230 F. Supp. 641, 643-45 (E.D. Mich. 1964), *modified*, 350 F.2d 302 (6th Cir. 1965); *Ex parte Richardson*, 380 So. 2d 831, 832 (Ala. 1980); *Walker v. City of Birmingham*, 181 So. 2d 493, 503 (Ala. 1965), *aff'd*, 388 U.S. 307 (1967); *Mechanic v. Gruensfelder*, 461 S.W.2d 298, 307-08 (Mo. Ct. App. 1970) (per curiam); *Crozer-Chester Medical Center v. May*, 531 A.2d 2, 5-6 (Pa. Super. Ct. 1987), *appeal dismissed*, 550 A.2d 196 (Pa. 1988); *Neshaminy Water Resources Authority v. Del-Aware Unlimited, Inc.*, 481 A.2d 879, 883-84 (Pa. Super. Ct. 1984); *Vermont Women's Health Center v. Operation Rescue*, 617 A.2d 411, 413-14 (Vt. 1992).

The reach of the Injunction, which is limited by the "in concert with" language, does not extend, as Petitioners argue, to anyone espousing an antiabortion viewpoint. While in this particular case, as is true much of the time, individuals acting in concert with named defendants may share a particular viewpoint—opposition to abortion—the police here have been ordered to arrest, not on the basis of viewpoint, but only on a good faith belief that the individuals are acting in concert with or participating with the named defendants to violate the terms of the Injunction. Moreover, this Court has already recognized that a buffer zone restriction can be tailored to reach only the conduct that causes the problem. *See Burson v. Freeman*, 112 S. Ct. at 1856. As Justice Blackmun emphasized, "States adopt laws to address the problems that confront them. The First Amendment does not require States to regulate for problems that do not exist." *Id.*

B. The Need To Bind Nonparties To An Injunction Is Heightened When Protesters Are Numerous Or Difficult To Identify

Recalcitrant antiabortion protesters across the nation provide the quintessential example of why courts must bind nonparties to injunctive decrees. Antiabortion protests attract large crowds of people that are not easily identified. *See, e.g., Roe v. Operation Rescue*, 919 F.2d 857, 862 (3d Cir. 1990) (police arrested over 900 peo-

ple during demonstrations); *New York State National Organization for Women v. Terry*, 732 F. Supp. 388, 393 (S.D.N.Y. 1990) (police arrested several hundred demonstrators during the demonstrations). Demonstrations at Aware Woman Center were no different. The court found that anywhere between a handful to 400 protesters converged upon Aware Woman Center, one to three times a week. J.A. 51.

Antiabortion activists often distribute flyers encouraging others to join them in protests at a specified clinic. *See, e.g., Northeast Women's Center v. McMonagle*, 745 F. Supp. 1082, 1093, *modified*, 749 F. Supp. 695 (E.D. Pa. 1990), *aff'd as modified and remanded in part*, 939 F.2d 57 (3d Cir. 1991) ("as part of this 'campaign,' defendants organized and solicited others to join in what defendants have referred to as a series of 'rescues' "). As neither clinic operators nor police know the names of those in attendance at the antiabortion protest, it is impossible to name with specificity or certainty all potential defendants prior to obtaining an injunction. The rules governing injunctions, however, obviate the need to name all parties through the use of "in concert with" provisions. As the Vermont Supreme Court reasoned, binding nonparties was necessary to prevent a situation where " 'any groups bound on violating the rights of others . . . [could] effectively defeat the power of the courts' by continually changing the persons acting against the injunction." *Vermont Women's Health Center v. Operation Rescue*, 617 A.2d 411, 414 (Vt. 1992) (quoting *Bratton v. MGK, Inc.*, 587 N.E.2d 134, 137 (Ind. Ct. App. 1992)).

The inability of plaintiff clinics to identify all possible defendants in an injunction suit is compounded by the protesters' widespread refusal to provide their true names following arrest, instead giving such pseudonyms as "John Doe." *See, e.g., Bratton v. MGK, Inc.*, 587 N.E.2d 134, 135 (Ind. Ct. App. 1992); *State v. Franck, aka John Doe 632*, 499 N.W.2d 108 (N.D. 1993); *see also* Tanya Barrientos, *Jail Keeps 'Nameless' Abortion Foes,*

Philadelphia Inquirer, July 31, 1988, at A4; *The 80% Majority Campaign*, Vol. 3, No. 8, The Campaign Report, at 1 (Aug. 15, 1988).[24] Protesters employ this tactic to avoid a finding that they acted in concert with the named defendants. Indeed, in this very case, just two days after the Injunction was issued, approximately 50 protesters were arrested at Aware Woman Center, and many of the arrestees used the pseudonym "John Doe." *See* Pet. Br. at 11; Pet. for Writ of Cert. at 8 n.7. This tactic again highlights the necessity of using "in concert with" provisions to bind nonparties.

Gutting the "in concert with" provisions, as Petitioners urge, will make injunctions against crowds of antiabortion protesters impossible to enforce. As it is, court orders against antiabortion protesters are repeatedly violated,[25] and a common defense to charges of contempt is that the alleged contemner was not acting in concert with the named parties. *See, e.g., Aradia Women's Health Center v. Operation Rescue*, 929 F.2d 530, 533 (9th Cir. 1991); *Roe v. Operation Rescue*, 919 F.2d at 871-72; *New York State National Organization for Women*, 732 F. Supp. at 404-09; *Bratton v. MGK, Inc.*, 587 N.E.2d at 136-37; *Crozer-Chester Medical Center v. May*, 531 A.2d 2, 5-6

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[24] Copies of these materials are being lodged with the Clerk of the Court.

[25] *See, e.g., Roe v. Operation Rescue*, 919 F.2d at 862 ("In spite of the TRO, defendants carried out their planned 'rescue missions' " on three separate days); *NOW v. Operation Rescue*, 747 F. Supp. 772, 775 (D.D.C. 1990) (defendants violated the permanent injunction during three days of protests); *Northeast Women's Center*, 745 F. Supp. at 1085-86 (each of the 24 defendants found liable for trespass had entered the premises of the clinic on at least one and as many as three occasions; furthermore, the court noted that there was no evidence that the defendants' unlawful activities would cease and, in fact, the evidence suggested the opposite); *New York State National Organization for Women v. Terry*, 732 F. Supp. at 393-95 (defendants violated TRO on three separate occasions and violated subsequent permanent injunction on at least eight separate occasions).

(Pa. Super. Ct. 1987); *Vermont Women's Health Center*, 617 A.2d at 413-14; *cf. State v. Franck, aka John Doe 632*, 499 N.W.2d at 111. These cases perfectly illustrate the due process protections embodied by the "in concert with" language. Unless the court makes an evidentiary finding that a nonparty is acting in concert with the named parties, the nonparty is not bound by the injunction and cannot be held in contempt.

Given the amorphous and varied activities of anti-abortion protesters and the large number of unidentified participants, it is essential for courts to be able to deter unnamed parties from thwarting the effectiveness of the court's order. As explained by one of the many courts that have confronted the problems created by clinic blockades:

> [I]f this Court refused to enjoin those individuals who join in active concert with the defendants and who participate in non-peaceful activity through the defendants' invitation, the injunction would essentially be sapped of its strength. . . .
>
> Thus, I conclude that enjoining merely the activities of the named defendants will be wholly insufficient to protect plaintiff and its staff and patients from the continued harassment, assaults and intimidation, which they have regrettably endured and will, inevitably, continue to endure unless a more complete injunction is issued.

Northeast Women's Center, 745 F. Supp. at 1093-94.

CONCLUSION

Buffer zone injunctions have been used by numerous courts to restore peace and order to the turbulence surrounding abortion clinics across the nation. These injunctions permit protesters to engage in protected First Amendment activity while controlling the lawless conduct that often accompanies antiabortion demonstrations. Thus, buffer zone injunctions effectively balance the rights of protesters with the rights of patients seeking

safe access to medical services, the rights of abortion clinics to provide these services, and the needs of the communities to maintain public order. These injunctions have been consistently upheld as reasonable time, place and manner restrictions.

The buffer zone Injunction upheld by the Supreme Court of Florida is well supported by the record and falls comfortably within long-established precedent recognizing the constitutionality of buffer zones in highly-disputed situations not limited to the abortion context. For the foregoing reasons, this Court should affirm the decision below of the Supreme Court of Florida.

Respectfully submitted,

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April 1, 1994

APPENDIX

APPENDIX

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

Case No.: 384995

PLANNED PARENTHOOD ASSOCIATION OF SAN MATEO COUNTY, PLANNED PARENTHOOD ALAMEDA/SAN FRANCISCO and NADER OSTOVAR,

Plaintiffs,

v.

OPERATION RESCUE OF CALIFORNIA, YOUTH FOR AMERICA, KEN REED, JEFF WHITE, KATHRYN SHORT, BRYAN HOWARD LONGWORTH, MICHELLE RENEE MUELLER, DAGMAR MERARI TORRES, MIKE CURTIS POWELL, KIMBERLY ALVARENGA, MARY LEE SMEDLEY, DAVID DOUGLAS FULLER, DANIELLE ALFRED SILVA, JUDE FRANCIS VOS, PATRICK JOSEPH MCKENNA, MICHAEL CHRISTIAN ROSS, STANFORD ABNER WARNER, MARTIN MUNOZ, STEVE BUTLER, JOHN D. A. BRIDGES, and ROB COCHRAN,

Defendants.

ORDER AND PRELIMINARY INJUNCTION

This cause came on for hearing on September 21, 1993, and October 20, 1993, upon the *ex parte* application of plaintiffs Planned Parenthood Association of San Mateo County, Planned Parenthood Alameda/San Francisco, and Nader Ostovar for a preliminary injunction. Upon reading the memorandum of points and authorities submitted in support of and in opposition to the application, and having considered the declarations and evidence and heard the arguments of counsel, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

In accordance with California Code of Civil Procedure sections 527 and 527.6, Rob Cochrane and Operation Rescue of California, and each of them, and their agents, employees, representatives, and any persons in active concert or participation with them, or any of them, and all persons with actual notice of this order shall:

(a) not threaten, strike or make physical contact with Dr. Ostovar or his family members;

(b) not keep Dr. Ostovar or his family members under surveillance;

(c) not follow Dr. Ostovar or his family members;

(d) not telephone Dr. Ostovar or his family members;

(e) not block Dr. Ostovar's or his family members' movements at home, in public places or thoroughfares, or on any property belonging to, leased or rented by Planned Parenthood;

(f) not take any photographs or videotapes of Dr. Ostovar, his family members, or any person accompanying or assisting him as he arrives or departs from his places of employment or home;

(g) stay at least 30 feet away from Dr. Ostovar and his family members; and

(h) stay at least 250 feet away from Dr. Ostovar's residence in San Mateo, California.

IT IS FURTHER ORDERED THAT:

In accordance with California Code of Civil Procedure section 527, Rob Cochrane and Operation Rescue of California, and each of them, and their agents, employees, representatives, and any persons in active concert or participation with them, or any of them, and all persons with actual notice of this order, are restrained and enjoined from directly or indirectly:

(a) Entering or blocking or obstructing any other person's ingress to or egress from Planned Parenthood's San Mateo Clinic, maintained and operated by plaintiff at 2211 Palm Avenue, San Mateo, California;

(b) Demonstrating, picketing, distributing literature, or counseling on Planned Parenthood's private property located at 2205 and 2211 Palm Avenue, San Mateo (including the walkway at the front of the clinic building, the walkways and driveways on either sides of the clinic building, and the parking area behind the clinic building), or within fifteen (15) feet of such private property;

(c) Entering or blocking or obstructing the ingress or egress of any vehicle to or from any parking area in front of or behind said Clinic;

(d) Obstructing or impeding the movement of any person between any vehicle and said Clinic, or of any person using the walkways leading to the front door of the clinic and along the south wall of the clinic building;

(e) Approaching any Planned Parenthood staff member, patient or companion once that person has made it unmistakably clear that he or she does not wish to be approached;

(f) Shouting, chanting, or otherwise producing loud noises which can be heard within said Clinic;

(g) Physically touching, threatening to physically touch, or shouting at any individual entering or leaving said Clinic.

IT IS SO ORDERED.

Dated: Nov. 09, 1993

/s/ [Illegible]
Judge of the Superior Court
County of San Mateo

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

WOMEN'S HEALTH CENTER OF DULUTH (PA),
Plaintiff,

vs.

OPERATION RESCUE, MISSIONARIES TO THE PREBORN, LAMBS OF CHRIST, RALPH OVADAL, BRIAN JOHNSON, LESLIE "LYDIA" LIEBLIN, GREG SCHWEIGGER, JOE FOREMAN, KEITH TUCCI, RANDALL TERRY, MARGARET WULF, CHARLES WULF, ORVILLE STONE, JR., ROSCOE BUTTERFIELD, MIKE HANSEN, LEANN HANSEN, LINDA O'CONNOR, JOHN AND JANE DOE, AND ALL PERSONS ACTING IN CONCERT WITH THEM,
Defendants.

TEMPORARY RESTRAINING ORDER

The above entitled matter came before the undersigned Judge at the above-named Court on the 16 day of June, 1993. Plaintiff appeared by counsel. Susan Ginsburg and Jeffrey T. Wallace. The Court having heard counsel and having reviewed and considered the Motion, Affidavits, Memorandum and records and files herein makes the following:

TEMPORARY ORDER

1. That the Defendants, their agents, and all organizations and persons acting in concert or participation with Defendants who receive notice of this Injunction by personal service, by having it read to them, or otherwise, be enjoined and restrained in any manner, or by any means, from:

a. trespassing on, sitting in, blocking, impeding or obstructing ingress or egress from the Women's Health Center (hereinafter WHC) facilities and the homes and residences of staff, paid or volunteer, agents and patients of the WHC;

b. harassing, intimidating or physically abusing persons entering, leaving or working at WHC facilities;

c. obstructing the work of the persons located at WHC facilities by any means, including preventing use of the WHC telephone lines, singing, chanting, yelling, shouting, or screaming, that substantially interferes with the provision of medical services including counseling, with such facility;

d. going within 100 feet of the property line of the Arrowhead Place during such times as WHC is open for business;

e. going within 2 city blocks of the homes or residences of staff, paid or volunteer, agents and patients of WHC;

f. following, harassing, religious blessing or praying, photographing, videotaping and intimidating, or speaking with the staff, paid or volunteer, agents and patients of WHC, and their families, who indicate that they do not wish to be spoken to;

g. distributing leaflets or brochures to any person who has indicated orally or by gesture that such person does not wish to receive such literature; and

h. inducing, encouraging, or directing others to take any of the actions described above.

2. That Defendants be directed to inform all persons who assemble to participate in any demonstration or "rescue" at WHC or similar action in concert or participation with Defendants of the existence and contents of the TRO, Preliminary and/or Permanent Injunction governing the behavior specified above;

3. That nothing in the Injunction shall be construed to limit Defendant's lawful exercise of their legitimate First Amendment rights, except that reasonable restrictions on the time and manner of Defendant's expression of their right to picket and demonstrate are included herein;

4. That a contempt penalty of $5,000.00 per day for the first violation of the Order be imposed on each Defendant, and each agent of Defendants, and each person acting in concert or participation with Defendants with notice of this Preliminary and/or Permanent Injunction, who violate the terms of this Preliminary and/or Permanent Injunction and whose contempt is proven;

5. That each successive violation of this Order subject the contemnor to a civil contempt fine double of the previous fine;

6. That any amount collected under a judgment of contempt be paid into the Registry of the Court to be disbursed by further Order of the Court; and

7. That each contemnor be jointly and severally liable for all attorney's fees and related costs incurred by the Plaintiff in relation to enforcement of the Injunction.

8. That the Court grant such other and further relief as to this Court may seem just, appropriate and proper.

The Defendants shall be restrained until the 19th day of July, 1993 at 9:45 o'clock fore after noon or as soon thereafter as the matter shall be heard by the Court whether or not to grant a preliminary injunction.

Dated this 16th day of June, 1993.

BY THE COURT:

/s/ [Illegible]
Judge of District Court

STATE OF NORTH DAKOTA
COUNTY OF CASS
IN DISTRICT COURT

Civil No. 91-1953

FARGO WOMEN'S HEALTH ORGANIZATION, INC., GEORGE MIKS, M.D., SUSAN WICKLUND, M.D., JANE BOVARD, Administrator, and on behalf of the staff of Fargo Women's Health Organization, Inc., and JANE DOE(S), being fictitious names intended to designate present and prospective patients of the Fargo Women's Health Organization,

Plaintiffs,

vs.

LAMBS OF CHRIST; FOCUS ON FARGO; HELP AND CARING MINISTRIES; COMMUNITY PRAISE CENTER; DAROLD LARSON; JODY CLEMENS; TIM LINDGREN; KATHY BENEDA LINDGREN; CHET GALLAGHER; CHRIS VENKELESE; RON MAXON; OPERATION RESCUE; and all other individuals, associations, and organizations who's names or legal identities are otherwise unknown to Plaintiff's at this time, with whom they have conspired and acted in concert with to deprive Plaintiff's of their rights,

Defendants.

AMENDED TEMPORARY INJUNCTION

Whereas, the Plaintiffs, Fargo Women's Health Organization, Inc., George Miks, M.D., Susan Wicklund M.D., Jane Bovard, Administrator, and on behalf of the staff of Fargo Women's Health Organization, Inc., and JANE DOE(S), being fictitious names intended to designate present and prospective patients of the Fargo Women's Health Organization, through their attorneys, Alan Pol-

lack of New York, N.Y. and William Kirschner, of Fargo, N.D. brought on for hearing at the Cass County Courthouse at 1:30 p.m. on November 6, 1991, the Plaintiffs' Motion for a Preliminary Injunction; and

WHEREAS, the named defendants, Lambs of Christ; Focus on Fargo; Help and Caring Ministries, Inc.; Community Praise Center; Darold Larson; Jody Clemens; Tim Lindgren; Kathy Beneda Lindgren; Chris Vankelese; Ron Maxon; Operation Rescue; appeared personally or through their respective attorneys, Richard Varriano of Moorhead Minnesota, Peter Crary of Fargo, North Dakota, and Monty Mertz of Fargo, North Dakota. Defendant Chet Gallagher appeared pro se; and,

WHEREAS, the original Order herein having been appealed to the Supreme Court of North Dakota on the 2nd day of January, 1992 and the Supreme Court having issued its Order affirming the injunction in part, reversing in part, and remanding the provision of the 100 foot restriction to this Court for more specific findings, a hearing was held on this issue at the Cass County Courthouse on September 16, 1992 at 10:00 a.m. and,

WHEREAS, the named defendants, Lambs of Christ; Focus on Fargo; Help and Caring Ministries, Inc.; Community Praise Center; Tim Lindgren; Kathy Beneda Lindgren; Chris Venkelese; Ron Maxon; Operation Rescue; appeared personally or through their respective attorneys, Richard Varriano of Moorhead Minnesota, Peter Crary of Fargo, North Dakota, North Dakota, Defendant's Darold Larson and Jody Clemens appearing pro se, and the Defendant Chet Gallagher not appearing; and,

WHEREAS, the Court having reviewed the pleadings and affidavits previously submitted to it, and having heard the arguments of Counsel and the pro se Defendants, this Court, being fully apprised in the premises, and having made it's Findings of Facts, Conclusions of Law, and Order for Judgment does hereby issue Judgment as follows:

1. That this Court has jurisdiction of the subject matter and of the parties to this action.

2. That the Amended Temporary Injunction shall read as follows:

IT IS HEREBY ORDERED AND ADJUDGED THAT YOU, Lambs of Christ; Focus on Fargo; Darold Larson; Jody Clemens; Tim Lindgren; Kathy Beneda Lindgren; Chet Gallagher; Chris Venkelese; Ron Maxon; Operation Rescue; all persons in active concert or participation with them; and all other individuals who receive actual notice of this Amended Temporary Injunction by personal service of a copy of said Amended Temporary Injunction or by having it read to them, and each of them, ARE HEREBY ENJOINED AND ARE ORDERED TO RESTRAIN FROM:

(a). trespassing on, sitting in, blocking, impeding or obstructing ingress or egress from FWHO facilities and the home and residence of Plaintiff Bovard, as well as the homes and residences of any staff (paid or volunteer) or patients of FWHO.

(b). harassing, intimidating or physically abusing persons entering, leaving or working at FWHO facilities and the spouses and family members of those persons entering, leaving or working at FWHO;

(c). obstructing the work of the persons located at FWHO facilities by any means—including singing, chanting, yelling, shouting, or screaming—that substantially interferes with the provision of medical services including counseling, with such facility;

(d). going within 100 feet of the property line of FWHO during such times as they are open for business, Monday through Saturday, from 7:30 a.m. til 6:00 p.m., except that two people may quietly and peacefully picket such facility, so long as said people do not interfere with the operations of said

facility, or individuals seeking to enter or leave FWHO as provided herein.

(e). following, harassing, photographing, videotaping, and intimidating done without consent, and persistently and with the intent to harass and intimidate staff and patients.

(f). inducing, encouraging, or directing others to take any of the actions described in paragraphs (a).-(e). above.

(g). That nothing in this Amended Temporary Injunction shall be construed to limit defendant's lawful exercise of their legitimate First Amendment rights, except that reasonable restrictions on the time and manner of defendant's expression of their right to picket and demonstrate are included herein. Further, this order shall not enjoin activity outside the territorial jurisdiction of this Court.

(h). That a contempt penalty for the first violation of the Amended Temporary Injunction may be imposed on each defendant, and their agents, all other individuals acting in concert or participation with defendants; and all other individuals who receive actual notice of this Amended Temporary Injunction, who violate the terms of this Amended Temporary Injunction and whose contempt is proven;

(i.) That each successive violation of this Amended Temporary Injunction may subject the contemnor to such penalties as are provided by law.

(j). That each contemnor may be jointly and severally liable for all attorneys' fees and related costs incurred by plaintiffs in relation to enforcement of this Amended Temporary Injunction.

3. The Amended Temporary Injunction entered here shall apply to any and all individuals who receive notice of the Amended Temporary Injunction. Service of this

notice can be made by personally handing or reading a copy to a person who is in violation or who is intending to violate the terms of the Amended Temporary Injunction.

4. Upon Entry of this Amended Temporary Injunction, the previously issued Orders in this case shall cease to be effective.

Dated this 17 day of September, 1992.

BY THE COURT:

/s/ Lawrence A. Leclerc
HONORABLE LAWRENCE A. LECLERC
Judge of District Court

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

Civil Action File No. 91-10869-9

JAMES GAY, M.D., *et. al.*,
Plaintiffs,

v.

NANCY KUEHL, *et. al.*,
Defendants.

ORDER AND PERMANENT INJUNCTION

The Court having reviewed the record and evidence presented at hearing before the Court on Plaintiffs' Petition for Preliminary Injunction on December 19, 1991, upon which the Court heard evidence and argument of Counsel, the Court now finds as follows:

The Northside Women's Center is located on a curve on Chamblee-Dunwoody Road, a well-travelled four-lane thoroughfare in DeKalb County, Georgia. Because of the curve of the roadway in front of the clinic, those leaving the clinic premises are disadvantaged by a limited sight distance. There is a 7'5" right-of-way running the entire 245' length of the clinic property along Chamblee-Dunwoody Road and separating the clinic property from the roadway.

Defendants have participated in demonstrations at the medical clinic for the past several years. Demonstrators have shouted at clinic staff members, "counselled" patients regarding alternatives to abortion, prayed aloud for an end to abortion, and disseminated anti-abortion literature. Most of the activities of the demonstrators have taken place in the 7'5" right-of-way bordering clinic property.

Demonstrators, some carrying large signs, have walked back and forth along the right-of-way and across driveways leading onto clinic property impeding the free ingress and egress of patients, staff and other vehicles to the clinic facility. Large signs held by demonstrators as well as the presence of large numbers of demonstrators in the right-of-way effectively block the vision of drivers coming into and out of clinic driveways and those travelling on Chamblee-Dunwoody Road. Vehicles entering the clinic premises have been stopped by demonstrators while the vehicle was partially blocking the roadway. The Court is extremely concerned about the safety of those entering and leaving the clinic property, motorists travelling on Chamblee-Dunwoody Road, and the demonstrators themselves.

This situation presents a classic case of the rights of the Plaintiffs to operate a lawful, licensed business and medical facility and the rights of clinic patients to obtain desired medical services colliding with the Defendants' Constitutional rights of freedom of speech and freedom of assembly. A balance is necessary to preserve the rights of all. In seeking an injunction, Plaintiffs have demonstrated that they have no adequate remedy at law.

PERMANENT INJUNCTION

IT IS THEREFORE ORDERED that any person operating on any Defendant's behalf or demonstrating in the vicinity of the Northside Women's Center is permanently restrained and enjoined from trespassing on, blockading, impeding or obstructing access to or egress from the Northside Women's Center. Further, demonstrators are restrained and enjoined from using any sign to block or impede ingress or egress to this facility's driveways.

IT IS FURTHER ORDERED that not more than 10 people shall congregate at any one time in the 7'5" right-of-way adjoining the clinic property in the area between the two driveways and not more than five people shall

congregate at any one time on the concrete sidewalk portion of the 7'5" right-of-way. Further, in the interest of safety, all demonstrators are enjoined from approaching within 10 feet on either side of any driveway extending from Chamblee-Dunwoody Road onto clinic property and no signs shall be placed or extended into this 10 foot area on either side of any driveway.

The Court further enjoins any demonstrators from physically or verbally abusing, assaulting, harassing or interfering with persons lawfully entering or leaving, working at or using any services at or upon Plaintiffs' business premises located at 3543 Chamblee-Dunwoody Road. Sidewalk counselling, consisting of quiet conversation of a non-threatening nature by not more than two people, is not enjoined by this Order.

Any person who receives a copy of this Order or who shall otherwise have knowledge of the terms of this Order shall be deemed to have notice of this Order and to be bound thereby for purposes of enforcement.

The Sheriff of DeKalb County or any police officer is ordered to immediately effect the arrest of any person having notice of this order who shall violate its terms and require that the person post a cash bond in the amount of $500.00 to secure the appearance of the person before the appropriate non-jury division of this Court to show cause why the person should not be found in contempt of this Order of the Court, except as otherwise set forth in the Orders of this Court as to the DEFENDANTS JANE SHEPHERD, NANCY KUEHL, DAPHNE MADOL, and WILLIAM HICKSON entered on July 24, 1992, and except as otherwise set forth specifically below as to DEFENDANT BOB JEWITT, the terms of which orders are incorporated by reference herein.

It is FURTHER ORDERED that DEFENDANT BOB JEWITT and any person operating in concert with or on

behalf of DEFENDANT BOB JEWITT be and is hereby permanently restrained and enjoined from this day forward and for his lifetime:

(1) From coming within 200 yards of the Northside Women's Clinic; provided, however, that, notwithstanding this distance limitation, Defendant Bob Jewitt is permitted to pass closer than 200 yards of the clinic both in the course of travelling Peachtree Industrial Boulevard and in the course of legitimate commercial enterprise with any business located along Peachtree Industrial Boulevard;

(2) From encouraging other persons to engage in abortion protest activities within the vicinity of the Northside Women's Clinic;

(3) From taking any part whatsoever in the planning, execution or funding of any abortion protest activities with or by others which protest activities would take place within the vicinity of the Northside Women's Clinic.

IT IS FURTHER ORDERED that should DEFENDANT BOB JEWITT appear within 200 yards of the Northside Women's Clinic, the Police Chief of the City of Chamblee, the Sheriff of the County of Dekalb, or any law enforcement officer within the state of Georgia is directed to immediately effect the arrest and detention of DEFENDANT BOB JEWITT to appear before this Court to show cause why BOB JEWITT should not be found in contempt of this Court's order;

FURTHER ORDERED that upon a determination by this Court that DEFENDANT BOB JEWITT has violated this injunction, DEFENDANT BOB JEWITT shall pay $5000.00 (five-thousand dollars) for each such violation, to the PLAINTIFFS as and for liquidated damages, and costs and attorneys fees of such action.

All other claims for relief against Defendant Bob Jewitt, prayed for in the Complaint, are hereby dismissed, costs paid.

This Order shall not impair nor bar the PLAINTIFFS' rights or causes of action against any other person, named or unnamed, in this cause.

All of which is SO ORDERED this 11th day of December, 1992.

/s/ [Illegible]
Judge
DeKalb County Superior Court
State of Georgia